IX. Disposition of Funds Received from Sources Outside the Government

A. The General Rule

With several exceptions (discussed below), 31 U.S.C. § 3302 requires the gross amount of all moneys received for the use of the United States from whatever source to be paid into the Treasury without deduction. Congress' purpose in enacting this statute was to guard its appropriation prerogatives under the Constitution against any encroachment by the executive branch. Thus, the Comptroller General of the United States has ruled that Federal proceeds as diverse as the following must be credited to the Treasury as miscellaneous receipts in the absence of specific statutory authority to do otherwise: judgments awarding court costs to the Government, 47 Comp. Gen. 70 (1967); parking fees, 45 Comp. Gen. 27 (1965); proceeds from the sale of Federal parkland, 50 Comp. Gen. 159 (1970); interest on advanced Federal funds, 20 Comp. Gen. 610 (1941); compensation paid by an insurance company to a cost plus contractor for damage to a Government ship that was not to be repaired, 48 Comp. Gen. 209 (1968); and reimbursements of costs associated with the provision of space for child care centers, B-222989, June 9, 1988.

B. Funds Received from Contractors

Until 1983, agencies could not apply excess reprocurement costs recovered from a breaching contractor to finance reprocurement. These too were required to be deposited in the Treasury as miscellaneous receipts. The rule was modified somewhat in 62 Comp. Gen. 678 (1983). Presently, excess reprocurement costs recovered from a breaching contractor may be credited to the pertinent appropriation to the extent necessary to finance the costs of the replacement contract in two situations: (1) if replacement costs have been incurred when the recovery is made and the appropriation funding the contract has not yet expired for purposes of incurring new obligations, or (2) if the excess costs have not been incurred when the recovery is made, the funds recovered may be applied to the reprocurement regardless of whether the financing appropriation is currently available or expired. These two rules apply whether the breach resulted from default termination or defective work.

The replacement contract must be coextensive with the original contract, that is it must procure only those things that were the subject of the original contract. Any recovered costs that are not necessary, or are not used for the reprocurement contract, must be deposited into the Treasury as miscellaneous receipts. This rule applies regardless of the life span of the appropriation; annual, multi-year, or no year. See 44 Comp. Gen. 623 (1965). It also applies when the monies are recovered by offset. See 20 Comp. Dec. 349 (1913).

The Comptroller General has not held, nor suggested, that monies can be credited to the appropriation funding the replacement contract if the replacement contract costs have already been incurred and the original appropriation is no longer available for obligation. See 65 Comp. Gen. 838 (1986). Thus, the benefits of the foregoing rules are somewhat illusory, particularly where litigation is necessary to establish the Government's claim, since the Government must have incurred the costs of reprocurement before it can enforce its claim for excess costs. See Whitlock Corp., Inc. v. U.S., 141 Ct. Cl. 758, 159 F. Supp. 602 (1958); Canadian Commercial Corp., ASBCA No. 20512, 76-2 BCA para. 12,054 (1976); American Supply Co., ASBCA No. 13668, 69-1 BCA para. 7700 (1969); Allied Tool and Machine Co., ASBCA No. 9435, 1964 BCA para. 4090. In many cases, by the time the Government has won its claim for such costs at the board of contract appeals, the financing appropriation is likely to have expired.

The Comptroller General has also held that recovery of contract payments in excess of the value of satisfactory performance (e.g., unliquidated progress payments and advance payments) may be credited to the financing appropriation. See 44 Comp. Gen. 623 (1965); 8 Comp. Gen. 103 (1928). Decisions also permit monies recovered from any improper or erroneous payment to b so credited on the theory that they are in the nature of a reduction in contract price for unfinished work. See 46 Comp. Gen. 554 (1966); 44 Comp. Gen. 623 (1965); 8 Comp. Gen. 103 (1928).

Under certain circumstances, liquidated damages may also be credited to the appropriation that was originally charged for the contract. See 64 Comp. Gen. 625 (1985); 44 Comp. Gen. 623 (1965); 23 Comp. Gen. 365 (1943); 10 Comp. Gen. 504 (1931); 9 Comp. Gen. 398 (1930). Traditionally, the rule that allowed crediting liquidated damages to the financing appropriation rather than to miscellaneous receipts was based on the rationale that (1) the assessment of liquidated damages merely represented a reduction in the contract price for work actually performed and (2) if it were later determined that the contractor should be relieved of the liability for the liquidated damages, the funds would be available and payable to the contractor from the same appropriation that funded the original contract. See 23 Comp. Gen. 365 (1944); 9 Comp. Gen. 398 (1930).

This rule has since been expanded. Modifying the holding of 46 Comp. Gen. 554, the Comptroller General concluded that the legal distinction between excess reprocurement costs and liquidated damages recovered from defaulting contractors was not pertinent, and held that, when used to fund a replacement contract, both serve the purpose of making the Government whole. 64 Comp. Gen. 625, 627 (1985). Accordingly, the Comptroller General allowed the proceeds of a performance bond, collected as

liquidated damages from a defaulting contractor, to be applied to the agency appropriations in order to fund the replacement contract. Id.

C. Statutory Exceptions

There are many statutory exceptions to 31 U.S.C. § 3302. For example, under 40 U.S.C. § 485a, expenses of the sale of public property may be covered from the sale's proceeds. Title 10 U.S.C. § 2636 provides that deductions made from carriers on account of the loss or damage of military or naval material shall be credited to the "proper appropriation, account, or fund out of which the same or similar material may be replaced." Similarly, 10 U.S.C. § 2577 allows proceeds from the sale of recyclable materials at an installation to be credited to funds available for operations and maintenance at the installation in amounts sufficient to cover the recycling costs. Finally, 10 U.S.C. § 2208 permits working capital funds to be reimbursed for the costs of the supplies, work, and services they provide.

In summary, it should be presumed that all funds received by the Government must be deposited into the Treasury as miscellaneous receipts in accordance with 31 U.S.C. § 3302. The exceptions discussed above, allowing a credit to be made to a specific appropriation depend upon specific statutory or GAO authority.